THE WESTLANDS CO.

IBLA 84-246 Decided September 24, 1984

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting competitive oil and gas lease bids. NM-57733 and NM-57735.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

A BLM decision rejecting a high bid for a parcel of land in a competitive oil and gas lease sale as inadequate will be affirmed where appellant fails to overcome the Government's prima facie showing of the correctness of its estimated minimum acceptable fair market value for the parcel and to establish that appellant's bid reasonably reflects fair market value.

APPEARANCES: David L. Nevils and William E. Freeman, copartners, The Westlands Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Westlands Company has appealed from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated November 28, 1983, rejecting its competitive oil and gas lease bids, NM-57733 and NM-57735. Appellant was declared the high bidder in a lease sale held August 31, 1983, with bids of $466.62 ($34.08 per acre) for parcel 160 (NM-57733) and $1,277.50 ($51.72 per acre) for parcel 162 (NM-57735). 1/

In its November 1983 decisions, BLM rejected appellant's bids because the bids were less than presale evaluations of the respective parcels.

1/ Parcel 160 contains 13.69 acres of land situated in sec. 11, T. 13 N., R. 13 W., Indian Meridian, Blaine County, Oklahoma, within an unnamed known geologic structure (KGS) in the Squaw Creek Field. Parcel 162 contains 24.70 acres of land situated in sec. 12, T. 17 N., R. 22 W., Indian Meridian, Ellis and Roger Mills Counties, Oklahoma, within an unnamed KGS in the South Peck Field.

By memorandum dated November 3, 1983, the Deputy State Director, Mineral Resources, BLM, recommended rejection of appellant's bids and stated that "[s]upporting data * * * is being retained in the Economic Evaluation Branch proprietary files."

In its statements of reasons for appeal, appellant contends that the November 1983 BLM decisions are "deficient" because they did not reveal the presale evaluation, or supporting factual data, with respect to parcels 160 and 162 and that its bids are "adequate." In support of the adequacy of its bids, appellant states that dry holes were drilled in close proximity to the subject parcels. Appellant notes the #1-10 Payne well drilled in 1971 by Union Oil Company of California less than three-quarters of a mile to the west of parcel 160, which tested in the Chester formation, and the #1-6 Harrel well drilled in 1977 by Sarkeys, Inc., less than one-half mile to the northeast of parcel 162, which tested in the Cherokee formation, were both dry holes.

By order dated May 18, 1984, this Board required BLM to submit a "reasoned and factual explanation of its presale evaluation" of parcels 160 and 162 in support of BLM's rejection of appellant's bids. We noted that, where an appellant's bids were not clearly spurious, such an explanation was required in order to permit the Board to independently determine the correctness of the rejection, citing Viking Resources Corp., 80 IBLA 245 (1984), and Southern Union Exploration Co., 51 IBLA 89 (1980).

On August 7, 1984, in response to our May 1984 order, we received copies of BLM tract evaluation reports for parcels 160 and 162. These reports support the BLM rejection of appellant's competitive oil and gas lease bids. They did not contain any confidential "proprietary" data obtained from commercial or noncommercial private sources.

With respect to parcel 160, BLM considered test data from nearby wells producing in the Springer formation, which is presumed to be located under the parcel, drilling and operating costs and other information. This data was used in conjunction with BLM's "Monte Carlo" present worth discounted cash flow (PW-DCF) model evaluation, using a risk factor of 40 percent, to arrive at a per acre value of $458.88. After an additional evaluation of comparable lease data, BLM established a minimum acceptable bid of $200 per acre "as of August 30, 1983." BLM noted that nearby land had been leased from the State of New Mexico in October 1981 for $301 and $380.63 per acre and in December 1981 for $502.75 per acre, and that "[i]nformation published by Petroleum Land Data Incorporated in their 'U.S. Lease Price Report' for July 1983 indicated that the lowest price reported as paid for bonus within Blaine County for private leases was $200.00 per acre."

With respect to parcel 162, BLM stated that it used test data and production histories from nearby wells producing in the Cottage Grove, Skinner, Tonkawa, and Cherokee formations, presumed by BLM to be located under parcel 162, drilling and operating costs and other information in conjunction with the "Monte Carlo" PW-DCF model, with a risk factor of 30 percent, to arrive at a per acre value of $277.71. BLM stated that it also examined comparable lease data and that the "'U.S. Lease Price Report' for July 1983 indicated

that the lowest reported private lease bonus price paid in Ellis County was $150.00 per acre, and the lowest Roger Mills County price was $200.00 per acre." BLM set the minimum acceptable bid at $200 per acre "as of August 30, 1983."

By order dated August 8, 1984, copies of the BLM tract evaluation reports were served on appellant and appellant was afforded 20 days from the date of receipt in which to file a response. No response was submitted by appellant. 2/

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent the fair market value for the parcel. Larry White, 81 IBLA 19 (1984), and cases cited therein.

Appellant contends that BLM failed to adequately document the basis for its determination that appellant's bids did not represent the fair market value of parcels 160 and 162 or even to disclose the presale evaluations. If the record had been maintained as it was prior to appellant's appeal, we would have found appellant's allegation to be meritorious and remanded the case to BLM for readjudication of appellant's bids. BLM had not made a prima facie showing of the correctness of its presale evaluations, and appellant's bids were not clearly spurious or unreasonable. See R. T. Nakaoka, 81 IBLA 197 (1984). However, BLM subsequently made a sufficient showing that its estimates of those values were prima facie correct, based on the proximity of producing wells, comparable lease data and its presale evaluations of the value of the parcels. Appellant must demonstrate not only that its bids did represent fair market value, but also that the Government's estimates of fair market value were inaccurate. See Viking Resources Corp., 80 IBLA 245 (1984).

Appellant alleges that the productivity of parcels 160 and 162 is called into question because dry holes were drilled in close proximity to the parcels. However, appellant has provided no evidence to dispute the fact that wells located in close proximity to the subject parcels are producing from formations apparently not tested in the wells cited by appellant. In both evaluation reports, BLM states that the "[a]nalyses and inspections of well logs from sections surrounding the tract[s] indicate uniform deposition for all target formations with no indications of abrupt faulting or intense folding which would create any type of hiatus or structural anomaly." BLM concluded that the hydrocarbon traps are primarily stratigraphic, rather than structural. Therefore, there is sufficient basis for a presumption that the producing formations underlie the parcels sought by appellant, and appellant has provided no evidence to the contrary. Accordingly, we conclude that BLM properly rejected appellant's bids for competitive oil and gas leases NM-57733 and NM-57735.

2/ We speculate that, having failed to comment after receiving the data sent to appellant on Aug. 8, 1984, appellant also found BLM's explanation of the basis of its decision to be satisfactory. An appeal may have been avoided if the information had been provided at the time of the BLM decision.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

R. W. Mullen
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge